HOME SECRETARIAT

NOTIFICATION

Bangalore, dated the 9th December 1974.

S. O. 2555.—In exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952 (Central Act LX of 1952), the Government of Karnataka being of the opinion that it is necessary so to do, hereby appoints Sri P. R. Lingoji Rao, I Additional District Judge, Bangalore as a Commission of Inquiry, to enquire and report on :—

(i) the circumstances leading to the deaths of

(a) Sri Javeed Ahmed s/o Abdul Rashid in the Lockup of Lashkar Police Station, Mysore, on the afternoon of 30th November 1974 ; and

(b) Sri Valli s/o Ghouse Peer, resident of N. R. Mohalla, Mysore City, at about 0050 hours on 1st December 1974 in K. R. Hospital, Mysore ;

(ii) the persons, if any, responsible therefor

(iii) the conduct of the police and other officers who have dealt with the matters ;

within a period of one month from the date of the Notification.

2. Under sub-section (1) of Section 5 of the said Act, the Government of Karnataka hereby directs that the provisions of sub-sections (2), (3), (4) and (5) of the said section shall apply to the said Commission.

[No. HD 697 SST 74.]

By Order and in the name of the Governor of Karnataka,

B. S. HANUMAN,
Commissioner for Home Affairs and Secretary to Government, Home Department.

1610

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.

PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of Gokak Mills Ltd., Gokak Falls.

Award of the Additional Industrial Tribunal, Bangalore published.

Read the following Papers :

(1) Letter No. 331/74-75, dated 3rd September 1974 from Sri G. S. Bhagwat, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated the 31st Day of August, 1974.

PRESENT

Sri G. S. hagwat, B.A.,LL.B., *Presiding Officer.*

A.I.D. No. 13/71

1st Party :

(*a*) Workmen represented by the President, Gokak Girani Rashtriya Mazdoor Sangh, Gokak Falls.

(*b*) The President, Belgaum Distirct Kamgar Union, 16, Dhamani Street, Camp Belgaum.

(*c*) The Secretary, Girani Kamgar Sangh, Gokak Falls, Belgaum District, Belgaum.

Vs.

IInd Party :

The Management of Gokak Mills, Limited, Gokak Falls.

Appearances :

For the I-Party (a):—Sri K. Subba Rao, Advocate, Bangalore.

For the I-Party (b):—Sri M. N. Dharwardkar, President, Belgaum Distrcit Kamgar Union, Belgaum.

For the I-Party (*c*) :—Sri M. C. Narasimhan, Advcate, Bangalore.

For the II-Party :—Sri R. G. Rajwade, Personnel and Industrial Relations Manager, Gokak Mills Ltd., Gokak.

AWARD

The aforestated reference arises out of the demand of the workmen of the Gokak Mills Ltd., Gokak Falls (hereinafter called I-Party) for payment of maximum bonus for the year ending 31st December 1968. The management of Gokak Mills, Gokak Falls (hereinafter called II-Party) declared bonus at the rate of 4 per cent of the annual earnings of the employees for the year 1968 and supplied a copy of the bonus calculation to each of the unions by its letter dated 9th August 1969 and proposed to pay the bonus on 20th August 1969. The I-Party workmen struck work from 16th August 1969. The Assistant Labour Commissioner, Belgaum took up the matter for conciliation on 19th August 1969. The parties could not arrive at settlement in respect of calculation

particularly the figures of exact depreciation, development rebate and qualified wage bill and finally the conciliation failed and the matter was referred to the Industrial Tribunal, Bangalore for adjudication by the then Government of Mysore by Order No. FCL 674 LLD 69, dated 1st September, 1969 followed by another order of the same number and date, prohibiting the continuance of strike by the workmen of Gokak Mills Ltd., Gokak Falls in exercise of the powers conferred on the State Government by sub-section (3) of Section 10 of the Industrial Disputes Act, 1947. It was numbered as I.D. No. 59/69 on the file of the Industrial Tribunal, Bangalore. Later by Government Order No. FCL 277 LLE 70, dated 23rd August, 1971, the Government of Mysore have withdrawn the proceedings of the case from the file of the Industrial Tribunal, Bangalore and transferred it to the Additional Industrial Tribunal, Bangalore. The records were received in this office on 1st September 1971 and came to be renumbered as A.I.D. 13/71 on the file of this Tribunal. The reference made by the Government is as follows :

Are the management of the Gokak Mills Limited, Gokak Falls justified in declaring bonus for the year 1968 at 4 per cent of the qualified wage bill during that year ? If not, to what other rate of bonus in respect of the said accounting year, are the workmen entitled ?

2. The I-Party workmen consists of 3 unions namely, workmen represented by (i) Gokak Girani Rashtriya Mazdoor Sangh (ii) Workmen represented by the President, Belgaum District Kamgar Union. (iii) The workmen represented by the General Secretary, Girani Kamgar, Gokak Falls and they are numbered as I(a), I(b) and I(c) party respectively. The I(a) party filed its claim statement on 12th December 1969. The contentions of the I(a) party in brief are that the II-Party company declared 4 per cent of the total wages as bonus as usual though the company made fabulous profits in 1968, that the profits are appropriated in such a way so that whatever

left over profits would not be sufficient to declare more than 4 per cent of the total wages as bonus, that working results are not known, but on conservative estimates workers are entitled to higher quantum of bonus and that there is substantial *surplus* to declare higher quantum of bonus for the year 1968. They also challenged the various items of expenditure incurred during the year 1968. The contentions of paras 1 to 8 of the statement of claim are irrelevant and have no bearing on the dispute under reference and need no mention.

3. The I(b) party filed its claim statement on 24th September 1969 disputing the figures shown in the calculation of the bonus supplied to them by the management and contended that those figures in the calculation of the bonus supplied by the management do not find support either by calculation or by any means provided by law. They claim at least 8.66 per cent of the total wages as bonus. The I(b) party union has also filed its tentative calculation as Annexure 'A' to the claim statement.

4. The I(c) party filed its claim statement on 9th October 1969. It claimed higher share in bonus on better prosperity. Their contentions are these: that all the figures in the balance sheet do not give a correct and true picture of the state of affairs that they purported to represent the valuation of the stocks at the year end, the adjustment of stocks being not properly done, that the manufacturing and other expenses claimed at Rs. 6,46,39,456 contained items of a capital nature and have to be added back to the profits, that deducation of managing remuneration is excessive, that the items, namely not carry forward amounts, refund of wealth tax and income tax of previous years transfer have to be added back and that the management has not considered the amendment to the Bonus Act while calculating the bonus for the year 1968.

5. The II-Party mills sent their counters dated 29th January 1970, in reply to the claim statements of I(a),

I(b) and I(c) party by post and they are received in this office on 2nd February 1970. They have taken preliminary objection to the reference and contended that the reference is bad in law. The other main and relevant contentions on which the mills opposed the demand of the workmen are almost similar and they are: that they put up a notice on 12th August 1969, advising a bonus equivalent to 4 per cent would be paid on 20th August 1969. The mills also sent copies of calculations and printed accounts to I(a), I(b) and I(c) party, in first week of August, 1969, requesting each of them to make its comments if any on the mills' calculations or to seek clarification on any points if it so desired. They did not make any comments on the company's calculations nor did they ask for any clarifications. The mills' calculations were made strictly in accordance with the provisions of the payment of Bonus Act which show that the allocable *surplus* was susceptible to payment of Bonus equivalent to 4 per cent of the total wages after adjusting the set off from the year 1965. The information sought by the workmen was already supplied to them during the conciliation proceedings and inspite of these figures they could not and did not substantiate their claim for any quantum of bonus than what has already been paid to them. The mills also denied that the manufacturing and other expenses amounting to Rs. 6,46,39,456 contained any items of capital expenditure. It denied that expenditure on stores and spares gear-repairs to plant and machinery etc., is capital expenditure. It denied the allegation that the managing agency remuneration is excessive and submitted that it was calculated strictly in accordance with the provisions of the company's Act. With regard to refund of wealth tax and income tax in respect of previous years, it was submitted that they cannot be added back while calculating previous year's bonus. The provisions for direct taxes were added back and notional tax allowed under the payment of Bonus Act was deducted. It was also further submitted that the mills already taken into account the provisions of the amendment to the payment of Bonus Act, while calculating the

bonus. It is therefore, the case of the company that the I(a), I(b) and I(c) party have failed to substantiate that they are entitled to any higher quantum of bonus than what has already been paid to them for the year in question and hence it was submitted that their demand for higher quantum of bonus be rejected in to-to.

6. The I(b) party filed its rejoinder on 7th March 1970 and the I(a) party on 8th April 1970. They have maintained that the reference is maintainable in law. They have challenged the depreciation and development rebate deducted from the Gross profit and contended that the figures supplied by the management in this regard and in regard to qualified wage bills are incorrect and are not borne by any records of the management and the figures shown in the calculation of bonus and Profits and Loss accounts by the management are not strictly according to the Payment of Bonus Act, and they reiterated the demand for higher quantum of bonus for the year 1968.

7. In addition to the points of dispute scheduled in the order of reference my learned predecessor framed six other issues arising out of pleadings covering on the validity of the reference on 27th July 1970. The preliminary objections to the reference taken by the II-Party mills were rejected by a common order passed on 25th January 1972 in A.I.D. No. 70/71. The II-Part mills examined three witnesses 2 on preliminary objections and one on accounts and on behalf of the I-Party workmen 2 witnesses were examined on preliminary point and 3 workmen by I(c) party were examined as common in A. I.D. No. 10/71. The mills has also examined M.W-1, N.D. Hukeri, the Senior Labour-*Cum*-Industrial Relations Officer and M.W-2 M.K. Tadwalkar, Secretary and Chief Accountant in this case and Exts. M-1 to M-18 were marked and Ext. W-1 was marked by consent on behalf of the workmen.

8. Heard Sri Rajwade for the II-Party. So also Sri K. Subba Rao for the I (a) party and Sri M. C.

Narasimhan for I(c) party. I(b) party and its representative Sri Dharwadkar absent throughout.

9. The dispute between the II-party mills and its employees arose in the following manner :

The II-party's accounting year is from 1st January to 31st December of a calendar year and its books of account are maintained on the mercantile system of accounting. The mills computed the amount of bonus in respect of the accounting year ending 31st December, 1968, payable to its employees under the Payment of Bonus Act and furnished on 9th August 1969, copy of the mills' bonus calculation for the year in question to the 3 unions representing its employees separately. They called on the unions to put any queries in this regard or comments to make. None of the unions put any queries or made comments in this regard. The available surplus and allocable surplus according to the Mills computation filed at Ext. M-15 were Rs. 9,07,225 and Rs. 5.44,335 respectively. On this basis after adjusting set off from 1965 *i.e.*, Rs. 1,53,018 the II-party mills declared the bonus at 4 per cent of the total wages paid to its employees.

10. The I(a) party filed its calculation statement on 9th March 1972 and claimed bonus at 20 per cent. The I(b) party along with its claim statement has filed its statement of calculation on 9th March 1972, claiming the bonus of 8.66 per cent. The I(c) party has not filed any statement of calculation. Gross profit under Section 4 and II schedule of the Payment of Bonus Act is conceded by the I(b) party and the management at Rs. 87,91,016. According to the calculation statement filed by I(a) party it has taken Gross profit at Rs. 105.93 lakhs. The I(b) party in its statement of calculation filed on 9th March 1972 has deducted Rs. 16,57,557 by way of depreciation. As opposed to this the II-party mills has deducted by way of depreciation Rs. 23,34,991 as shown in the computation of Gross profits filed at Ext. M-15 (*vide* last page). The I(a) party has taken deduction of Rs. 7,75,000 by way of

development rebate in the statement of calculation filed on 9th March 1972. Whereas under Ext. M-15 the II-party has claimed Rs. 10,30,755 by way of development rebate under Section 6 (b) of the Payment of Bonus Act. So far as return on equity share capital is concerned the I (b) party has shown Rs. 9,95,724. The II-party mills has also claimed the same in Ext. M-15 (*vide* last page). So far reserves are concerned the I(b) party has taken at Rs. 6.51,404. Whereas the II-party mills has claimed Rs. 7,35.748 in Ext. M-15 (*vide* last page), The II-party mills has added Rs. 1,97,325 as difference in tax as per Payment of Bonus (amendment Act, 1969), according to which whatever bonus is paid in 1967, 60 per cent of the tax rebate for that bonus has to be added as available surplus. Both the II-party in Ext. M-15 and I(b) party in its statement of calculation have shown the exact figure. Therefore, the controversial points between the I(b) party and the II-party relate to :

(i) Depreciation.

(ii) Development rebate.

(iii) Return on reserves.

So far as the I(a) party calculations are concerned the first controversial points is that the I(a) party has added to the Gross profits, the gratuity already paid to the workers *i.e.*, 0.50 lakhs for the year 1968. The second controversial point is that the I(a) party in its statement of calculation has added back 17.47 lakhs as capital expenditure. These are the only two points under Section 4 and Schedule II of the Payment of Bonus Act in controversy between I(a) party and the II-party mills. So far as the deductions are concerned the points at variance are the same as are between the I(b) party and the II-party mills. So far as the tax is concerned, I(a) and I(b) party have made a major mistake. If their calculation was accepted the tax would be Rs. 44.88 lakhs.

11. Now on the other hand we find that the II-party mills in working out the bonus for the year in question has

done everything in consonance with the provisions of the Payment of Bonus Act. It is seen that the II-party mills put up notice Ext. M-10 on 12th September 1969, advising a bonus equivalent to 4 per cent would be paid on 20th August 1969. The mills also sent copies of calculations and printed accounts to I(a) Party, I(b) and I(c) party by Exts. M-5, M-6 and M-4 dated 9th August 1969. The mills accounts were finalised on 20th May 1969 and adopted in Annual General Meeting on 25th June 1969. This will be found from Ext. M-14. I(a) party made demand for maximum bonus on 11th June 1969 (as per Ext. M-1). I(b) party made a claim for 8.66 per cent on 25th August 1969 as per Ext. M-9 and the I(c) party made a claim for maximum bonus on 14th July 1969 which is at Ext. M-2. On 16th August 1969 the entire mill went on strike. The State Government hastened to take only the bonus matter in conciliation and in conciliation the I(b) and I(c) party participated and I(a) party throughout remained absent. The conciliation ended in failure and the failure report is at Ext. M-8. Thereafter this reference was made by the State Government and the mills had taken preliminary objections regarding validity of the reference which were over-ruled.

12. The I(a) party asked for information by their application dated 22nd August 1972 regarding the amount of depreciation charged on the buildings, expenses incurred for maintenance of the mill colony and other residential quarters, wages and salary paid to the school teachers, Medical staff, Malis and sanitary workers, particulars of the nature and details of the repairs to the plant and machinery, building and other items and whether it includes conversion of spinning frames. The mills supplied the information on 4th September 1972 giving particulars in response to the application made by the I(a) party, and this has been taken on record with consent and marked as Ext. W-1. With these facts on record we shall now proceed to examine the case of the II-Party mills.

13. The bonus for the year 1968 is concerned it is fully covered by the Payment of Bonus Act and there is no controversy about it. This is according to Section 1 (4) of the Payment of Bonus Act. Under the circumstances the entire activities of management and the employees are covered under Section 34 (1) of the Payment of Bonus Act. Section 23 of the Payment of Bonus Act grants a presumptoin and that presumption according to the Supreme Court in Metal Box Company of India Ltd.. versus their workmen 1969 I LLJ page 785 wherein their Lordships observed at page 797 under Section 23 of the Bonus Act, there is presumption of the genuineness of profit and loss account produced by the company unless it is challenged in the manner provided therein." Therefore, it is clear that in case of a company where its accounts are audited by certified auditors, under the Company's Act, then the authority may presume that the statements and particulars in such balance-sheet and statement of accounts are accurate. It is also made clear that in such a case it is not necessary for the Tribunal to insist upon proof of depreciation of each and every item of asset. However, in a case of this type one cannot lose sight of the fact that some reasonable proof of the correctness of the figure of depreciation claimed by the employer is necessary. This the employer can do either by examining the auditor, who calculated and certified it or by some other person.

14. In the present case the employees disputed the computation Ext. M-15 contending that the mills had wrongly reduced the Gross profits and the available surplus and I(a) party contended that the following amounts should be added back namely :

(i) Provision for bonus Rs. 3,91,000 and

(ii) Provision for income tax Rs. 30,88,205.

They also challenged the deduction of interest on the reserves. So also the I(a) and I(b) party disputed the figures of depreciation, developmuct rebate and direct taxes

deducted by the mills while working out the available surplus.

15. The Profit and Loss Account for the year 1968 Ext. M-14 and the computation Ext. M-15 indicate how the bonus for the year 1968 was worked out by the Mills, which started with the net profit of Rs. 31,59,087. This is found at page 18 of Ext. M-14. That is the profit for the year. Further it is seen that the mills had added the bonus provision as Rs. 3,91,000. This is as per schedule II Clause (2) of sub clause (a). Regarding depreciation in Ext. M-15 we find the same figure at page 18 of Ext. M-14 and the same amount has been added. According to the schedule II clause (2) sub clause (c) a provision is made for direct taxes, including the provision (if any) for previous accounting years. The management is required to add back the provision so made. The mill has made the provision for direct tax at Rs. 28,00,000 and this we find at page 18 of Ext. M-14. The next item according to schedule II clause (2) sub clause (d) is the provision for development rebate/development allowance reserve and the mill has taken it at Rs. 7,75,000 which we find that the II-Party mills has made out the assumed Gross profit for the purpose of the Bonus Act as required under Section 4 and schedule II of the Act. It is further seen that the donation in excess of the amount admissible for income tax has also to be added back according to schedule II clause (3) sub-clause (d). This particular item of Rs. 8,372 is seen at page 23 of Ext. M-14. The mills have debited this amount and here in Ext. M-15 it is credited back. With this we find that the mills obligation of formulating Gross profit is complete. There is in schedule II clause (3) sub clause (d) which says that the employer should add back the capital expenditure if debited to the Profit and Loss Account. In this connection M. W-2 M. K. Tadwalkar, Chief Accountant has positively stated that no capital expenditure has been debited to the accounts of the company in Profit and Loss account for 1968 and consequently no item of the previous year has been debited to the Profit

and Loss Account of 1968. There is nothing to show in his cross-examination that for 1968 any capital expenditure has been debited to the accounts of the mills in the Profit and Loss Accounts. Therefore, it can safely be taken that the Gross Profit under Section 4 and schedule II of the Payment of Bonus Act for the year in question is Rs. 87,91,016. This is the starting point for deduction and I(b) party has accepted the same.

16. Now under Section 6 (a) and 6 (b) of the Payment of Bonus Act the mill is entitled however to deduct out of the Gross profits arrived at under Section 4 of the Bonus Act, the whole of the depreciation and development rebate admissible under the Income Tax Act. Ext. M-18 is the assessment order. If we look to the deduction given by the Income Tax Authorities, we find that depreciation and initial depreciation both come together to Rs. 23,34,991. If we look to the calculation of the mill at Ext. M-15, we find that the mill has deducted exactly that amount. This is in accordance with Section 6 (a) of the Payment of Bonus Act. Additional support to this figure we find in Ext. M-17 which is the Auditor's certificate and also the evidence of M. W-2 Tadwalkar who states in his evidence "the depreciation and the development rebate shown in the last page of Ext. M-15 are worked out according to the Income Tax Act. Certificate from the auditors was also obtained as per Ext. M-17. The company has been assessed to Income Tax for 1968. Ext. M-18 is the copy of the assessment order. The depreciation shown on the last page of Ext. M-15 is accepted of the Income Tax Authorities while assessing the company to Income Tax." The witness was cross-examined. He was not asked any thing which would rebut the figures of depreciation claimed by the mills.

17. Now coming to the development rebate M. W-2 has positively stated that the development rebate shown in the last page of Ext. M-15 are worked out according to the Income Tax Act. Ext. M-17 which is the certificate from

the Auditor wherein the auditors certify that on the assessment order dated 4th February 1970 produced before them the development rebate is Rs. 10,30,755. This is also seen from Ext. M-18 which is the copy of the assessment order for the year in question. Thus we find that the development rebate of Rs. 10,30,755 taken by the mills and shown in Ext. M-15 is according to Section 6 (b) of the Payment of Bonus Act.

18. In Ext. M-14 the mill had shown Rs. 31,59,087 as Net profit and out of that amount had deducted diverse amount as expenditure including the sum of Rs. 16,57,557 by way of depreciation and Rs. 7,75,000 by way of development rebate. In its computation filed before this Tribunal at Ext. M-15 the mill, however, claimed depreciation of Rs. 23,34,991 and development rebate at Rs. 10,30,755 worked out under the Income Tax Act 1961 while assessing the mills to Income Tax. The unions disputed these amounts on the ground :

(i) that there is no evidence that the amounts of depreciation and development rebate came to Rs. 23,34,991 and Rs. 10,30,755 respectively,

(ii) that since the Profit and Loss Account mentioned Rs. 16,57,557 as depreciation and Rs. 7,75,000 as development rebate ;

and that the company could claim that amount only. The fact that the mills while preparing its Profit and Loss Account Ext. M-14 and its computation Ext. M-15 produced before this Tribunal, had kept the distinction between depreciation and development rebate worked out under the Company's Act and the one to be worked out under the Income Tax Act for the purpose of the Bonus Act is clear from the evidence of its witness M. W-2 Tadwalkar. It is for this reason that Rs. 16,57,557 were shown as depreciation and Rs. 7,75,000 were shown as development rebate in the Profit and Loss Account while in the computation Ext. M-15 the mills claimed Rs. 23,34,991

as depreciation and Rs. 10,30,755 as development rebate. There is, therefore, no question of the mill having made any mistake in calculating depreciation and development rebate in calculating depreciation and development rebate in the Profit and Loss Account or that it is trying to amend that mistake.

19. Now coming to the equity share capital we find at page 16 of Ext. M-14 that the mills capital for the previous year and the year in question was Rs. 1,17,14,400. If this is allowed dividend at 8.5 per cent as per Schedule III clause (1) sub clause (2) of the Payment of Bonus Act, we find that the mathematical calculation would show that it is Rs. 9,95,724. It is further seen that the mills reserve on the first of January, 1968 is Rs. 1,22,62,465. The mill is entitled to 6 per cent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year as per schedule III clause (1) sub-clause accounting year as per schedule III clause (1) sub-clause (3). On this point M. W-2 Tadwalkar was asked in cross and he states "the reserved which I have taken into consideration for claiming prior charges are 29.99 lakhs and 92.62 lakhs". Therefore, strictly in confirmity with Sections 4, 5, 6 schedule II and schedule III of the Payment of Bonus Act, if the amounts are worked out, we find that the Gross profit comes to Rs. 87,81,116. This leaves surplus of Rs. 7,09,900. To this surplus the mills have added tax rebate on the bonus paid in 1967. This is as per amendment to Section 5 of the Bonus Act. This amendment came into existence only for the accounting year 1968 onwards. I(b) party has also added exactly the same amount. Therefore, it is seen that the total available surplus comes to Rs. 9,07,225. Now according to the definition of allocable surplus under Section 2 sub-section (4) of the Bonus Act, 60 per cent of such available surplus is the allocable surplus. Therefore, the allocable surplus in the present case comes to Rs. 5,44,335. The mill has deducted an amount of Rs. 1,53,018 from the set off of

from 1965 under sub-section (4) of Section 15 of the Bonus Act. This is supported by two affidavits filed on 14th August 1973 on behalf of the mill and an order passed on 18th October 1973 accepting the same. This particular thing has been stated by M.W-2 in para 2 of his statement. Having accepted that set off the only amount available is Rs. 3,91,317 for payment of bonus which is susceptible to 4 per cent of the qualified wage bill Ext. M-16 which comes to Rs. 97,82,936. Therefore, after taking into consideration the provisions of the Payment of Bonus Act, we find that the mill has paid the bonus to its workmen for the year 1968 payable under the Bonus Act.

20. The I(c) party has not made out any case. They have not submitted any calculations. The contention of the I(c) party have no legal bearing because under Section 23 of the Bonus Act it is crystal clear that the only way one can vitiate the presumption is strictly under Section 23 and not by wild allegations This position is considered in the Metal Box case by Supreme Court reported in 1969 I LLJ page 797. Ext. M-4 was sent to I(c) party requesting for comments, observation or queries on the calculation of the mills. The I(c) party however, did not ask any information or did not make any comments on the mills calculation which were sent to them. The I(a) party in para 9 of the claim statement has stated that working results are not known, but on conservative estimates, workers are entitled to higher quantum of bonus. They have asked for information on 22nd August 1972 and the reply was given on 4th September 1972. In the meantime the I(a) party submitted its calculation on 9th March 1972. It is seen that the calculations submitted by I(a) party are totally opposed to the principles of Payment of Bonus Act.

21. Now coming to the gratuity we find that it is a normal retiring benefit which is given to the workers and this we find at page 22 of Ext. M-14. This is debited to the Profit and Loss Account for having been paid. Corresponding figure for 1967 is 81,011 and this has been accepted for 1967 as a profit debit. M W-2 in para 4 of

his deposition states "the company has a gratuity scheme for all its employees even including daily rated workers. The amount of Rs. 56,411 debited on page 22, item 4 (b) of Ext. M-14 has actually been paid as gratuity during the year". On this point no queries raised, no cross and no information sought under Section 23 (2) of the Bonus Act In the circumstances the only conclusion would be that it is a proper debit and cannot be added back. There is no mention of adding gratuity in schedule II. Following the law laid down in Metal Box Company of India Ltd., *versus* their workmen, 1969 I LLJ at page 786 the mill in the circumstances held entitled to ask for deduction of the gratuity actually paid to its employees during the year.

22. The I (a) party has added 17 47 lakhs as capital expenditure in the statement of calculation field by it on 9th March 1972 in this case. While doing so the I (a) party has added the first three items together shown in item 7 at page 22 of Ext. M-14 to the mills account. If we turn to the mills reply Ext, W-1 dated 4th September 1972 we find that the mill has divided the expenditure into four specific columns so that what is spent over the machines can be seen distinctly. Further it will be pertinent to note from Ext. M-14 that last year the expenses of the mills were 17 lakhs as opposed to 14 lakhs during the year in question It is seen from Ext M-18 which is the assessment order that nothing of this capital expenditure has been added back by the Income Tax Authorities as well. Therefore it is seen that what is mentioned in part III of the calculation statement of I (a) party is totally against what is stated in schedule II clause (3) sub-clause (d) foot note 1.

23. Now coming to the deductions it is seen that I (a) and I (b) party have litted the deductions shown at items I and II bodily from page 18 of Ex, M-14 To that extent the calculations submitted by I (a) party are totally opposed to the provisions of the Bonus Act. It is seen that the method of calculation is no more a matter of speculation It is a simple mathematical calculation according to Sections 4, 5, 6, schedule II, III, Section 15 and schedule IV of the Bonus Act.

24. There remains now the question regarding computation of the direct taxes Section 6 (c) of the Bonus Act provides "subject to the provisions of Section 7 in direct tax which the employer is liable to pay or accounting year in respect of his income profits and gains during that year.

Section 7 of the Bonus Act *inter alia* provides "for the purpose of clause (c) of Section 6 in direct payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year ....." In the present case the II-party mill claimed a deduction of Rs. 29,88,898 from the Gross profit of Rs. 87,91,016 as direct taxes. It has made provision, however for Rs. 28,00,000 for the direct taxes in the Profit and Loss account. In its computation Exts. M-15 it has claimed Rs. 29,88,898 as direct taxes worked out under Section 6(c) on the Gross profits worked out under Section 4 of the Bonus Act. The mill deducted from such balance Rs. 23,34 991 as depreciation worked out under Section 6 (a) ; Rs. 10,30,755 as development rebate worked out under Section 6(b) : Rs. 9,95,724 at 8.5 per cent of its paid up equity share capital as at the commencement of the accounting year and Rs. 7,35,748 at 6 per cent on reserves as shown in the balance sheet at the beginning of the accounting year worked out under Section 6(d) of the Bonus Act for the year in question. Logically it is only after all the prior charges have been determined and deducted from the Gross profits that available surplus can be ascertianed, and it is only after the available surplus is ascertained that the question of awarding bonus can be considered. Now the concept of notional tax liability which was adopted for some time was laid aside by Parliament when it enacted Sections 6(c) and 7 and replaced the concept of actual liability. Sections 4, 5, 6 and 7 of the Bonus Act together with the schedule II deal with the computation of Gross profits and available surplus out of which 67 per cent in cases falling under clause (a) of Section 2(4) and 60 per cent in the cases falling under clause (b) of that sub-section would be the allocable surplus. Under schedule II which applies to

the II-party, which is not banking company, the starting point is the net profit shown by the employer in his Profit and Loss Account. The reason for doing so seems to be that the Tribunal is not expected ordinarily to re-open the Profit and Loss Account, verify the accounts from which it is worked out or find out for itself the true net profit. This is why Section 23 was enacted to raise a presumption about the correctness of the Profit and Loss Account and balance-sheet of companies duly certified by Auditors qualified under Section 2(26) of the Companies Act, 1956. Since the Profit and Loss Account would have taken to the account besides expenditure available under the Income-Tax Act, bonus payable to labour, provisions for tax, development rebate and reserves, clause (2) of schedule II requires these amounts to be added back. Similarly the amount set off in clauses 3 and 4 in schedule II are also to be added back. Thus we find that deductions permissible under schedule II are those items in which it can be said that labour could have made no contribution in earning them. So far as development rebate is concerned Section 6(b) of the Bonus Act allows the whole of such rebate allowable under the Income Tax Act and therefore, there would be no difficulty in working out the development rebate under this head and Income-Tax Act. *Prima facie* it would be seen that the Bonus Act would not intend an enquiry into the actual taxable income worked out under all the elaborate provisions relating to deductions, allowances, reliefs, etc., provided by the Income Tax and other such Acts.

25. However, a vague attempt was made on behalf of the I (a) and I (c) party that manufacturing and other expenses amounting to Rs. 6,46,39,456 included many items of capital expenditure. In this connection reliance was placed on the evidence of W. W-2 and W. W-4. It was further contended that no positive evidence has been placed on behalf of the II-Party mill to show what parts of the machinery they have replaced. If we turn to the mills reply dated 4th September 1972 Ext. W-1 we find that the mills has divided expenditure into four specific columns showing the manufacturing and other expenses and there is no difficulty to find out what is spent by the

mill over the machineries. As against this whatever has been presented by I (a) and I (b) party by way of alternate calculations, we find, it is not in accordance with the Payment of Bonus Act. The contentions of I (a), I (b and I (c) party has no legal bearing, because under Section 23 of the Bonus Act it is crystal clear that the only way one can question the correctness of the figures in the Profits and Loss Accounts is in the manner provided under Section 23 and not by wild allegations. The calculations submitted by I (a) and (b) party would reveal that they are not made in accordance with the provisions of the Bonus Act. The quantum of Bonus depends entirely on the allocable surplus which has to be worked out strictly in accordance with the provisions of the Payment of Bonus Act. In working out the bonus for the year in question the II-party mill has done everything in accordance with the provisions of the Payment of Bonus Act. After providing for the prior charges and mentioned in Section 6 of the Payment of Bonus Act, the results for the year are susceptible to Payment of Bonus equivalent to 4 per cent only of the total wages after adjusting the carry forward set off from the year 1965. In the present case apart from making vague allegations the I (a), I (b) and I (c) party did not and could not show any valid differences with the mills calculations. They have also failed to show that they are entitled to any higher quantum of bonus, then what has already been paid to them for the year in question.

26. The contention of the I-party regrding the adjustment of set off from 1965 by the Mills is contrary to the provisions of Section 15 of the Payment of Bonus Act and the mill has correctly adjusted the set off from the year 1965.

27. From all what has been stated above, it is clear that the mills calculations for the year in question are strictly in accordance with the provisions of the Bonus Act and the results are susceptible to Payment of Bonus equivalent to only 4 per cent of the total wages after adjusting set off from the year 1965.

In the result my findings on the points of dispute are; that the II- party management of the Gokak Mills Ltd.

Gokak falls are justified in declaring bonus for the year 1968 at 4 per cent of the qualified wage bill and the workmen of the II-party are not entitled to any higher quantum of bonus for the year 1968 and the Award is passed accordingly.

No Order as to costs,

(Sd)/-)

G. S. BHAGWAT.
Presiding Officer.
Additional Industrial Tribunal, Bangalore.

"True Copy"

G. S. BHAGWAT,
Presiding Officer,
Additional Industrial Tribunal, Bangalore.

ORDER

Bangalore, dated 12th September 1974

S.O. 2558—

WHEREAS by State Government Order Nos. FCL 674 LLD 69 and FCL 277 LLE 70, dated 1st September 1969 and 23rd August 1971, the Industrial Dispute between the workmen and the management of Gokak Mills, (P) Ltd., Gokak Falls, was referred to the Additional Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Additional Industrial Tribunal Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette*.

[No. SWL 193 LLA 74.]

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.